



Discovery was originally set to close on April 12, 2019. Due to scheduling difficulties, the parties agreed to extend the discovery period for purposes of conducting depositions and issuing third-party subpoenas, but each agreed that the extension would not apply to written discovery. Thus, the parties were required to serve written discovery by March 12, so that responses were due prior to the close of discovery. Accordingly, both parties issued additional written discovery on that date, March 12<sup>th</sup>. [Docs 86 and 87]. That discovery did not seek the tax returns now sought by the deposition notices.

On March 13<sup>th</sup>, Plaintiff requested Defendants' depositions by email. That email did not include a copy of the Notice with the proposed duces tecum, nor was there any indication that Plaintiffs intended to request additional documents from the Defendants in this manner.

Approximately one month later, on April 12<sup>th</sup>, Plaintiff served the deposition notices that included the duces tecum. First, these requests are untimely, in that written discovery has closed, and the duces tecum served on a party deponent, is a written discovery request under Rule 34. Further, even if written discovery were to proceed, which Defendants specifically object to given the parties' agreement and the close of written discovery, the Notice is improper pursuant to Rule 34, which requires the parties be allowed 30 days to respond. The Notices purported to require document production within 17 days (as to Emily Winchester) and 24 days (as to Randy Winchester).

Even more importantly, however, is the fact that the request for the Defendants tax returns seek documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Defendants do not dispute that discovery of information as to the parties' assets and liabilities is appropriate given the claims for punitive damages, but the discovery of the Defendants' tax returns does not provide that information. Additionally, tax returns are generally not discoverable to establish information admissible in punitive damages cases, in part based on federal policy regarding the privacy of returns, and in part because discovery of past earnings is not generally permitted in punitive damages related discovery. *See e.g., Sexton v. Lewis*, Case No. 06-06120-CV-W-HFS, 2008 WL 11337861 (W.D.

Mo.). For these reasons, Defendants will not agree to produce their tax returns for 2016, 2017 and 2018 at their upcoming depositions, unless they are ordered to do so by the Court.

Notably, while Plaintiff seeks the Defendant's personal tax documents, it has refused to produce information and documents related to Plaintiff's own financial information, specifically its assets and liabilities and income information.

WHEREFORE, for the reasons stated herein, Defendants object to the duces tecums issued with Document Nos. 96, and 97, and will not produce such documents until the Court has addressed the discoverability thereof.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 25<sup>th</sup> day of April, 2019, the foregoing *Defendants' Objections to Duces Tecums Contained in Party Deposition Notices* was filed electronically with the Clerk of the US District Court for the Western District of Missouri; and a service copy was served electronically via email only on the following:

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